

October 13, 1995

Ms. Suzanne Balderston  
State Insurance Fund  
**STATEHOUSE MAIL**

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Status of Northwest Power Planning Council Employees

Dear Ms. Balderston:

This letter is in response to your request of July 27, 1995, regarding the status of Idaho's members and employees of the Northwest Power Planning Council for workers' compensation purposes.

We conclude that the Idaho members and employees are officers and employees of the State of Idaho for purposes of workers' compensation coverage.

**I.**

**BACKGROUND**

The Pacific Northwest Electric Power and Conservation Planning Council (commonly known as the "Northwest Power Planning Council" and hereinafter referred to as the "Council") was created by Congress pursuant to the Pacific Northwest Electric Power Planning and Conservation Act. Public Law 96-501. The act empowered the Bonneville Power Administration (BPA) to create the Council with a membership composed of two persons from each of the states of Idaho, Montana, Oregon and Washington. One practical effect of the act was congressional approval for the future creation of the Council as an interstate compact. Since congressional approval was given in advance, the remaining action required to create the compact was the assent of each of the four included states. Idaho manifested its assent by enacting Idaho Code § 61-1201 *et seq.*

From its inception in 1981 until June 30, 1995, the Idaho members and employees of the Council have been paid through the State of Idaho Auditor's Office, despite the fact that the entire funding for the Council was derived through the BPA. The BPA paid federal funds to the State Auditor who in turn paid the salaries and expenses of the Idaho Council members and employees. As of July 1, 1995, the funds for the salaries and expenses of the Idaho members and employees were no longer channeled through the State of Idaho and are currently paid directly by the Council.

## II.

### ANALYSIS

#### A. Idaho Attorney General Opinion No. 81-3

In 1981, the President Pro Tem of the Idaho State Senate presented two questions to the Attorney General of the State of Idaho referencing the Council and Idaho's membership therein. A copy of Attorney General Opinion No. 81-3 is attached hereto. The two questions presented were as follows:

1. In addition to congressional statute, is state legislative action required to authorize the creation of and appointment to the office of Idaho Council Member for the Pacific Northwest Electric Power and Conservation Planning Council?
2. With or without the state legislative action by what legally proper process may appointments to the Council be made?

1981 Idaho Att'y Gen. Ann. Rpt. 59.

The opinion concluded that "the Council's members are state, not federal officers" and that "we believe that [Congress] conceptually envisioned that the members would serve as officers of the respective states they represent." *Id.* at 63. In reaching this conclusion, the opinion relied on the fact that the members and employees of the Council cannot be officers or employees of the federal government by specific provisions of the act. *Id.* at 62, 63. The legislative history of the act also noted that Congress envisioned the members and employees representing the individual states and that the Council was not a federal agency. *Id.*

The opinion concluded that the federal government cannot create a State of Idaho public office and, therefore, the Idaho Legislature needed to create the office of Idaho Council Member. Once a public office is created under Idaho law, the persons placed in such office are state officers. Also, unless otherwise specified in the enabling legislation, the Idaho statutes regarding appointment to public office apply to the positions. *Id.* at 64-65.

Therefore, since the date of their initial appointments in 1981, the Idaho members and employees of the Council have been considered state officers and employees. Since coverage for workers' compensation is included as part of employment with the state, or holding a public office of the state, there is no question that the officers and employees were covered under the state's workers' compensation program as of that date.

## **B. Idaho Code § 61-1201 *et seq.* Does not Change the Analysis**

Following the issuance of Attorney General Opinion No. 81-3, the Idaho Legislature adopted Idaho Code § 61-1207 *et seq.* which took effect on April 8, 1981. The effect of this legislation bolsters the analysis above that the Idaho members and employees of the Council are state officers and employees.

Idaho Code § 61-1201 provides that “the State of Idaho agrees to participate in the formation of the [Council].” Idaho Code § 61-1202 creates “in the Office of the Governor, a state office to be known and designated as [Council] Member . . .” (Emphasis added.) The governor appoints the two members from Idaho with the advice and consent of the senate. Pursuant to Idaho Code § 61-1203, the two members serve at the pleasure of the governor. Under Idaho Code § 61-1205, the physical office of the Council members must be located in the City of Boise and the Department of Administration is required to furnish office space to the Council members at the same rates charged to state agencies. Pursuant to Idaho Code § 61-1206, the Idaho Council members must report annually to the governor and the legislature and, under Idaho Code § 61-1207, the legislature may express its intent and concerns regarding activities of the Idaho Council members by concurrent resolution.

Reviewing the above statutes shows that the Idaho Council member is a state office. Therefore, the persons holding such office, and their employees, are state officers and employees.

As of April 8, 1981, the effective date of the statutory creation of the Idaho Council members, the members and employees were state officers and employees for the purpose of workers’ compensation coverage.

## **C. The Change in Payment Method as of July 1, 1995, Does not Change the Analysis**

Pursuant to Idaho Code § 61-1204, the annual salary of each Council member is set by the governor. Further, all expenses of the Council members incurred while conducting business of the Council must be reimbursed. However, this section states that “[s]alary and expense monies shall be paid from federal appropriations as provided for [in the act].”

Thus, it was contemplated by the Idaho Legislature that, although the governor could set the salaries of the Council members, all salary and expense monies were to be paid by federal funds. In practice, the salaries and expenses were an item in BPA’s annual budget. That money was transferred from BPA to the State of Idaho and paid as the salaries and expenses for the Idaho Council members and employees. The recent change, effective July 1, 1995, to a direct payment from the Council to the Idaho members and employees does not change the analysis.

The change in the manner and method of payment is simply an accounting and bookkeeping change and does not reflect a change in the status of the Idaho Council members or employees. Idaho Code § 61-1204 has always contemplated that the funds for the Idaho Council members would be provided by the federal government. The statute does not require any method by which the salaries or expenses shall be paid. Therefore, it was proper, prior to July 1, 1995, to pay the salaries and expenses by channeling the funds through the State of Idaho. However, it is equally proper to pay the salaries and expenses directly from the Council. The method of payment has no effect on the status of the members and employees as officers or employees of the State of Idaho.

### **III.**

### **CONCLUSION**

The Idaho members and employees of the Northwest Power Planning Council are state officers and employees for the purpose of workers' compensation coverage. Attorney General Opinion No. 81-3 concluded that the Idaho members were state officers. The enabling legislation contemplates the same result. The change in the method of payment for salaries and expenses does not alter the analysis as such method of payment was contemplated in the enabling legislation. Therefore, the Idaho members and their employees are state officers and employees for workers' compensation coverage purposes.

I hope this adequately addresses your inquiry. If you have any further questions regarding this, please do not hesitate to contact me.

Very truly yours,

KEVIN D. SATTERLEE  
Deputy Attorney General  
Contracts & Administrative Law Division